

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DANA CORPORATION,

Plaintiff,

Case No. 98-74521

v.

Honorable John Corbett O'Meara

AMERICAN AXLE & MANUFACTURING,  
INC.,

Defendant.

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**OPINION AND ORDER**

**DENYING DEFENDANT'S MAY 25, 2005 MOTION FOR SUMMARY JUDGMENT  
AND DENYING AS MOOT PLAINTIFF'S SEPTEMBER 9, 2005 MOTION TO STRIKE**

This matter came before the court on defendant American Axle & Manufacturing's ("AAM's") May 25, 2005 Motion for Summary Judgment of Invalidity Under 35 U.S.C. § 102(b) Based Upon AAM's "Launch Shudder" and "On Sale" Activity. Plaintiff Dana Corporation filed a response September 9, 2005. Without leave of the court, AAM filed an impermissible 30-page reply brief September 19, 2005. Along with its response brief on September 9, 2005, plaintiff Dana filed a motion to strike certain exhibits from AAM's motion brief. AAM filed a response to that motion September 19, 2005. Oral argument on these motions was heard September 22, 2005.

Twice this court has granted summary judgment in this matter, and twice the United States Court of Appeals for the Federal Circuit has vacated and remanded the court's orders. Having heard AAM's re-filed motion for summary judgment of invalidity, it is clear to the court that genuine issues of material fact are in dispute.

Therefore, it is hereby **ORDERED** that defendant AAM's May 25, 2005 motion for summary judgment is **DENIED**.

It is further **ORDERED** that plaintiff Dana Corporation's September 9, 2005 motion to strike is **DENIED AS MOOT**.

s/John Corbett O'Meara  
John Corbett O'Meara  
United States District Judge

Dated: November 10, 2005